

HONORABLE BARBARA J. ROTHSTEIN

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

vPersonalize Inc.,

Plaintiff,

v.

Magnetize Consultants Ltd. (*dba* Kit Builder),

Defendant.

Case No.: 2:18-CV-01836-BJR

**ORDER RE: MOTION TO COMPEL
AND DISMISSING COUNT II OF
FIRST AMENDED COMPLAINT**

Having reviewed the LCR 37 Submission Regarding Interrogatory No. 1 and Request for Production No. 1 (“Motion to Compel”) filed by Defendant Magnetize Consultants Ltd. (Dkt. No. 41), and the various pleadings filed in response to the issues therein, and in light of certain representations to the Court contained in the parties’ Joint Status Report (Dkt. No. 90), the Court rules as follows:

Plaintiff vPersonalize, Inc. asserts that “it has responded to Defendant’s Interrogatory Number 1 and Request for Production Number 1 with relevant information available to Plaintiff.” JSR at 5. In its responses to Defendant’s discovery requests, however, Plaintiff also asserted a number of objections to Defendant’s requests. *See* Ex. 6 to Decl. of Seth Watkins, Dkt. No. 42. Thus, the only issue remaining in the Motion to Compel, as far as the Court can discern, is whether Plaintiff has waived these objections, having failed to timely respond to the requests. The Court

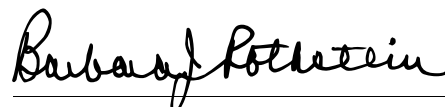
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1 finds Plaintiff has waived the objections, both by its untimely response to the requests and by its
2 failure to offer any valid explanation therefor. Plaintiff shall turn over *all* responsive documents
3 that it has not already produced, if any, and respond to Interrogatory No. 1 fully, irrespective of
4 any purported objections. Such production shall occur within 10 days of the date of this Order. If
5 no additional documents or information in Plaintiff's control remain, Plaintiff shall so represent to
6 Defendant, subject to Fed. R. Civ. P. 11 and the rules of discovery. By this Order, the Court
7 emphasizes that unexcused disregard of Court deadlines and other rules cannot be countenanced
8 in a case as potentially complex as this. Defendant's Motion to Compel is therefore granted.

9 In addition, based upon repeated representations by both parties, including Plaintiff, that
10 Plaintiff is no longer asserting infringement of U.S. Patent No. 9,406,172, the Court hereby
11 dismisses Count II of Plaintiff's First Amended Complaint, Dkt. No. 22. Plaintiff need not and
12 shall not file a motion for leave to file an amended complaint reflecting its voluntary dismissal of
13 this count.

14 Dated this 25th day of October, 2019.

16 

17 Barbara Jacobs Rothstein
18 U.S. District Court Judge